Filed 8/19/19 P. v. Dedeker CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Nevada)

THE PEOPLE, Plaintiff and Respondent, v. JEREMY WILLIAM DEDEKER, Defendant and Appellant.	C087350 (Super. Ct. No. TF16000235)

A jury found defendant Jeremy William Dedeker guilty of multiple sexual offenses against the victim, the minor son of his former girlfriend (mother). He was sentenced to serve a determinate term of 12 years in state prison plus a consecutive indeterminate term of 40 years to life.

On appeal, defendant contends: (1) his trial counsel was constitutionally ineffective for failing to object to inadmissible character and hearsay evidence he disciplined the victim and his own daughter by yelling at them and spanking them with a belt, and for failing to request an instruction limiting the jury's consideration of such

other bad acts evidence; (2) the prosecutor introduced inadmissible testimony from the lead detective about her experiences in other child sexual abuse investigations that the prosecution used to improperly vouch for the credibility of its case, and that his counsel was ineffective for failing to object to the evidence; (3) the trial court violated his state and federal constitutional confrontation rights by allowing the minor victim to testify with a support dog without showing an individualized need for the dog; and (4) cumulatively the alleged errors require reversal.

We conclude it was error to admit the disciplinary evidence, but there was no prejudice under the applicable ineffective assistance of counsel standard. We further conclude any portion of the lead detective's testimony that was arguably inadmissible was harmless, the court properly allowed the victim to testify with a support dog present, and any errors, either individually or cumulatively, were not prejudicial. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant was charged with sodomy of a child 10 years old or younger (Pen. Code, § 288.7, subd. (a); count 1),[1] oral copulation with a child 10 years old or younger (§ 288.7, subd. (b); count 2), two counts of lewd and lascivious act upon a child under 14 years old (§ 288, subd. (a); counts 3 and 5), and sodomy of a child under 14 years old (§ 286, subd. (c)(1); count 4). The following evidence was adduced at trial.

Defendant and mother had an on-again off-again relationship for over a decade. They began dating in 2006 when the victim was around three or four years old and quickly moved in together; defendant's own daughter and stepson also lived with them

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[1] Undesignated statutory references are to the Penal Code.

for a time. The victim's biological father was not involved in his life, and defendant acted as a surrogate father to him.

The victim testified that one day when he was around six or seven years old, defendant came into the bathroom while he was showering. Defendant undressed and got into the shower with the victim. Defendant asked the victim to wash his back, and the victim complied. After they got out of the shower, defendant sat on the floor and began masturbating. Defendant told the victim to sit down, and he put his penis in the victim's mouth. Defendant began moving the victim's head back and forth and then ejaculated in his mouth. The victim spit out the ejaculate. Defendant then instructed the victim to turn around. After doing so, defendant put his penis in the victim's "back side." The victim testified that defendant eventually ejaculated a second time in his anus. The incident was very painful, and the victim yelled, "ow" while being sodomized.

According to mother, she awoke the day of the incident and heard the victim's shower running; she could not find defendant in the house. Mother knocked on the bathroom door and asked who was inside; defendant responded that he and the victim were in the bathroom, and that they would be out shortly. She thought the situation was odd because the house had two other bathrooms.

Mother saw the victim after he came out of the bathroom. She testified that he did not say anything about what had occurred. When she asked him what happened in the bathroom, the victim told her that he fell. Mother also asked defendant why he was in the bathroom with the victim, and he said he went into the bathroom to check on the victim, who had fallen.

The victim testified that the next day he told his mother what defendant had done to him in the bathroom. She reacted as if she did not believe him. Mother, however, testified that the victim told her a few weeks later that defendant had tried to wash him; he did not tell her about the oral copulation or sodomy.

Shortly after the shower incident, defendant and mother broke up, and she and the victim moved out. Mother later called defendant and asked him if something happened in the bathroom; he denied that anything had occurred. Although the victim said he did not want to return to defendant's house, a month or two later mother and the victim moved back in with defendant. Mother said she hoped defendant would not do anything further to the victim. She did not report the incident to law enforcement because the victim had just been returned from foster care, and she did not want him removed again.

In 2016, when the victim was 13, he asked his mother about erections. Mother told the victim to ask defendant since he was a man and she did not know how to answer the questions. The victim asked defendant, and defendant answered the victim "like a parent."

The next day, defendant came into the victim's bedroom when the victim's penis was erect. He opened a condom and tried to put it on the victim's penis. When it did not fit, defendant put the condom on himself and masturbated until he ejaculated. He then removed the condom and told the victim to turn around and pull down his pants. The victim complied, and defendant inserted his penis in the victim's anus one time. The victim said he experienced the same type of pain as when he was younger. Defendant told the victim not to tell his mother because it was a "father-son" thing.

The day after the second sodomy incident, the victim testified that he and defendant drove defendant's daughter to her mother's house. While driving home, the victim's penis became erect. Defendant noticed and began showing the victim pictures of naked women on his phone. He told the victim that he would buy him a new cell phone if the victim masturbated in the car. The victim did so.

A few days later, the victim accompanied mother to her therapy appointment. After the appointment, the victim told mother that defendant had bribed him to

masturbate and tried to put a condom on him. Mother recalled the victim telling her defendant showed him pictures of naked people and condoms, and bribing him with a cell phone. Although mother had asked defendant to discuss erections with the victim, she did not authorize him to discuss masturbation. Defendant later apologized to mother for talking to the victim about masturbation and also for showing him videos of men and women having sex.

A short time later, mother and the victim moved out of defendant's home. Mother told K., defendant's brother's girlfriend who also lived at the house, that she and the victim were leaving and that they would not be back. According to K., mother told her she was going to the police to file charges against defendant for touching the victim. Mother said she was unhappy in the relationship and wanted to get back at defendant for the way he had treated her over the years. Mother, however, denied telling K. she intended to make up a story about defendant molesting the victim for revenge.

After the victim reported to police that defendant had touched him, police stopped the interview and arranged to have the victim interviewed by a person specially trained to interview alleged child sexual abuse victims (the MDI interview). Although the complete MDI interview was never shown to the jury, the prosecutor and defense attorney referred to portions of the MDI interview to impeach or rehabilitate the victim's testimony. During cross-examination, defense counsel asked whether the victim recalled telling the forensic interviewer during the MDI interview that during the bathroom incident when he was seven, he and defendant got out of the shower and were drying off when stuff came out of defendant's penis, and that he wondered what it was. The victim responded that did happen; something came out of defendant's penis before he stuck it in the victim's mouth.

The victim also testified on cross that defendant's penis was hard when he put it in his anus when he was 13 years old. But he then admitted saying during the MDI

interview that defendant's penis was soft when he put it in his anus on that occasion. After being confronted with his prior statement during the MDI interview, the victim said he did not recall whether defendant's penis was hard or soft. Defense counsel next asked whether the victim remembered telling the forensic interviewer that he did not feel any pain during the second sodomy incident. He said he did not recall his prior statement, but said he had felt pain when defendant put his penis in his anus the second time.

On redirect, the prosecutor referred to the MDI interview to rehabilitate the victim. The victim agreed with the prosecutor that it was more accurate to say that during the MDI interview he had not said defendant's penis was soft, but that defendant "did not do it as hard as the last time," meaning when the victim was seven years old. The victim also agreed that during the MDI interview he had said defendant only partially inserted his penis into his anus, and the statement was consistent with his memory at the time of trial.

Sergeant Lisa Madden was called as a witness by both parties. She investigated the victim's allegations against defendant.

Throughout her law enforcement career, Sergeant Madden had investigated around 50 sexual assault cases. She testified, without objection, that of those prior 50 sexual assault cases, 20 to 25 involved an alleged adult perpetrator and an alleged minor victim, and arrests were not made in every case but depended on where the investigation led.

During the investigation, Sergeant Madden arranged a pretext call between mother and defendant. Defendant admitted to mother that he had discussed masturbation with the victim, but denied demonstrating how to masturbate. Sergeant Madden later interviewed defendant, and he repeatedly denied the sexual abuse allegations. She factored those denials into her overall investigation.

When the prosecutor questioned whether, based on her training and experience, it was common for suspects to deny sexual abuse allegations, defense counsel objected on relevancy grounds. The court overruled the objection and Sergeant Madden responded that it was "very common." Despite a suspect's denials, Sergeant Madden said she looked for inconsistencies in a suspect's statements when investigating sexual abuse allegations. While investigating defendant, she noticed inconsistencies in his statements. For example, defendant denied ever seeing the victim masturbate, but later admitted he had seen the victim masturbate twice. She factored those inconsistencies into her investigation.

Sergeant Madden also testified about the victim's MDI interview, which she observed from another room through a live video feed. She considered the interview when making the decision to arrest defendant. Later, while cross-examining Sergeant Madden during defendant's case in chief, the prosecutor asked Sergeant Madden whether the victim's trial testimony was "largely consistent" with his MDI interview that was conducted two years before trial. She responded, "Yes, absolutely." Defendant did not object to the question or Sergeant Madden's response.

Throughout the trial, witnesses for both the prosecution and defense were questioned without objection about whether defendant had disciplined the victim by yelling at him and striking him with a belt. While the victim testified that defendant had hit him and defendant's own daughter with a belt, mother testified that she never saw defendant use a belt to discipline the victim. Officer Mark Victors testified during the prosecution's rebuttal that he responded to a Child Protective Services call when the victim and defendant's daughter were around two or three years old, and they had said defendant hit them with a belt. K. denied ever seeing defendant use a belt on the victim, but said it would not surprise her because defendant was similar to her own father who

had used a belt on her. Defendant's mother and aunt denied ever observing defendant use a belt to discipline the victim.

During closing arguments, the prosecutor distilled the case to a primary issue--whether the jury believed the victim. In arguing the victim was credible, the prosecutor emphasized that the witnesses, including defense witnesses, testified the victim was a good kid, and mother had remembered the bathroom incident but did not want to report it because she had just gotten the victim back from foster care. He also reminded the jury of Sergeant Madden's testimony that suspects often deny allegations of sexual abuse, like defendant did here, and the victim's trial testimony, according to Sergeant Madden, was largely consistent with his MDI interview.

Defense counsel agreed in closing that the case hinged on the victim's credibility. He argued that the victim had a motive to lie, pointing out the victim testified his aunt told him he could not see his sister unless defendant was found guilty. Counsel also emphasized the testimony of mother and the victim was suspect since mother supposedly wanted to get back at defendant for how he had treated her.

After deliberating for a few hours, the jury found defendant guilty as charged, and the court sentenced him to serve 12 years plus a consecutive indeterminate term of 40 years to life in state prison. Defendant's sentence included the upper term of 8 years for count 4, 2 years each for counts 3 and 5, 25 years to life for count 1, and 15 years to life for count 2. Defendant timely appealed.

DISCUSSION

I

Ineffective Assistance of Counsel

Defendant contends he was deprived of effective assistance of counsel because his trial attorney failed to object to the testimony, introduced largely through the victim and Officer Victors, that defendant sometimes disciplined the victim and his own daughter by

yelling at them and hitting them with a belt. According to defendant, there was no strategic reason for not objecting to the testimony because it constituted inadmissible prior bad acts evidence under Evidence Code section 1101, was more prejudicial than probative under Evidence Code section 352, and, at least with respect to Officer Victors' testimony, was inadmissible hearsay. Competent counsel, in his view, would have objected, and the absence of an objection was prejudicial. As a corollary, he argues counsel was constitutionally ineffective for failing to request a limiting instruction for the disciplinary evidence.

To establish ineffective assistance of counsel, defendant must show that his counsel's representation fell below the standard of a competent advocate and a reasonable probability exists that, but for counsel's errors, the result would have been different. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 694 [80 L.Ed.2d 674] (*Strickland*); *People v. Ledesma* (1987) 43 Cal.3d 171, 216-218 (*Ledesma*).) A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. (*People v. Bolin* (1998) 18 Cal.4th 297, 333.) "The likelihood of a different result must be substantial, not just conceivable." (*Harrington v. Richter* (2011) 562 U.S. 86, 112 [178 L.Ed.2d 624].) Surmounting *Strickland*'s high bar is thus never an easy task. (*Id.* at p. 105 [*Strickland*'s high bar must be applied with scrupulous care since ineffective assistance claims can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial].)

In determining whether counsel's performance was deficient, we exercise deferential scrutiny and "assess the reasonableness of counsel's acts or omissions . . . under the circumstances as they stood at the time that counsel acted or failed to act." (*Ledesma, supra*, 43 Cal.3d at p. 216.) "Although deference is not abdication [citation], courts should not second-guess reasonable, if difficult, tactical decisions in the harsh light of hindsight." (*People v. Scott* (1997) 15 Cal.4th 1188, 1211-1212.) If "it is easier to

dispose of an ineffectiveness claim on the ground of lack of prejudice . . . that course should be followed. (*Strickland, supra*, 466 U.S. at p. 697.)

"Whether to object to arguably inadmissible evidence is a tactical decision . . . ." (*People v. Maury* (2003) 30 Cal.4th 342, 415.) "[B]ecause trial counsel's tactical decisions are accorded substantial deference, failure to object seldom establishes counsel's incompetence." (*Id.* at pp. 415-416.) Nevertheless, we need not decide whether counsel had a reasonable tactical basis for omitting an objection because we conclude defendant has not shown the requisite prejudice necessary to support his ineffective assistance of counsel claim. (*Strickland, supra*, 466 U.S. at p. 697.)

In assessing whether any alleged deficiency in counsel's performance prejudiced defendant, we first consider whether the evidence was inadmissible. (*People v. Smithey* (1999) 20 Cal.4th 936, 965 (*Smithey*).) Evidence that a defendant has committed prior bad acts or crimes other than those currently charged is not admissible to prove the defendant is a person of bad character or has a criminal disposition. (*People v. Kipp* (1998) 18 Cal.4th 349, 369; Evid. Code, § 1101, subd. (a).) Evidence of prior bad acts or uncharged crimes is admissible, however, to prove such facts as motive, identity, common design or plan, intent, absence of mistake, or whether a defendant in a prosecution for an unlawful sexual act did not reasonably and in good faith believe that the victim consented. (*Kipp*, at p. 369; Evid. Code, § 1101, subd. (b).)

To be admissible under Evidence Code section 1101, subdivision (b), the prior bad acts evidence generally must be sufficiently similar to the charged crimes so as to support a rational inference that the defendant committed the charged crimes or possessed the same intent. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 402-403.) The probative value of the uncharged offense evidence must also be substantial and not be largely outweighed by the probability that its admission would create a serious danger

of undue prejudice, confusing the issues, or misleading the jury. (*Id.* at pp. 404-405; Evid. Code, § 352.)

In this case, defendant argues, and the People do not dispute, that the discipline evidence--that defendant yelled and used a belt to discipline the children--was improper character evidence. We agree. The disciplinary evidence was not similar in any way to the charged sexual offenses, nor was the evidence admissible to prove any of the permissible facts under Evidence Code section 1101, subdivision (b). It was therefore error to admit the evidence.[2]

While the disciplinary evidence was inadmissible, we conclude the evidentiary error was harmless. "Absent fundamental unfairness, state law error in admitting evidence is subject to the traditional *Watson* test: The reviewing court must ask whether it is reasonably probable the verdict would have been more favorable to the defendant absent the error." (*People v. Partida* (2005) 37 Cal.4th 428, 439; *People v. Watson* (1956) 46 Cal.2d 818, 836-837.)

Although in general prior bad acts evidence involves the risk of prejudice (e.g., *People v. Thompson* (1980) 27 Cal.3d 303, 318), the evidence here was not particularly sensational in nature or inflammatory in effect. In fact, K. testified that she had been disciplined with a belt growing up and did not consider that type of discipline indicative of an anger issue.

The character evidence also was relatively innocuous in light of the other sexual abuse evidence to which the victim testified in great detail. The victim testified that defendant put his penis in the victim's mouth and ejaculated when the victim was seven,

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[2] Given our conclusion the evidence was inadmissible under Evidence Code section 1101, subdivision (b), we need not address defendant's additional contentions that the evidence was more prejudicial than probative under Evidence Code section 352 or that some of the testimony was hearsay.

and then sodomized him. At the time, defendant was around 35 years old. Later, when the victim was 13, he said defendant tried to put a condom on him, masturbated in front of him, and then sodomized him again. He testified that defendant showed him pictures of naked people and bribed him to masturbate in front of him in exchange for a new cell phone. Evidence about yelling or the belt was not nearly as inflammatory as the sexual abuse evidence.

We also note the evidence allowed the defense to undermine the victim's credibility since his own mother testified she never saw defendant use a belt on the victim; according to her, defendant only put the victim in time out or spanked him with his hand on the victim's clothed bottom. None of the defense witnesses, moreover, testified to seeing defendant use a belt to discipline the victim. And neither party particularly emphasized the discipline evidence during closing.

The nature of the victim's testimony recounting defendant's sexual misconduct is not the type that could have been affected by the erroneously admitted and disputed evidence that defendant sometimes yelled and disciplined the victim and his own daughter with a belt. (Cf. *People v. Bergschneider* (1989) 211 Cal.App.3d 144, 163 [in case involving charged sexual offenses, erroneous admission of propensity evidence the defendant (the victim's stepfather) and her mother previously furnished the victim with drugs not prejudicial]), disapproved on another ground in *People v. Griffin* (2004) 33 Cal.4th 1015, 1028; *People v. Anderson* (1987) 43 Cal.3d 1104, 1137 [error in admitting prior criminal acts evidence of plan to rob gas station, which was not sensational or inflammatory, was not prejudicial].) Under the circumstances, we conclude it is not reasonably probable a more favorable result would have occurred had the disciplinary evidence been excluded.

Because we conclude admitting the disciplinary evidence was harmless, defendant has not shown counsel's failure to object to the evidence, or to request a limiting

instruction, was prejudicial. (*Ledesma, supra*, 43 Cal.3d at pp. 216-218; *Bolin, supra*, 18 Cal.4th at p. 333.) We therefore reject his ineffective assistance of counsel claim on that basis without deciding whether counsel was ineffective. (*Strickland, supra*, 466 U.S. at p. 697.)

II

Sergeant Madden's Testimony

Defendant contends the court erred in admitting certain portions of Sergeant Madden's testimony. He specifically objects that Sergeant Madden was permitted to testify (1) that not all of her prior sexual assault investigations led to arrests, (2) that suspects in child sexual molestation investigations commonly deny the allegations, and (3) that the victim's trial testimony was largely consistent with his prior MDI interview because such testimony was irrelevant and more prejudicial than probative under Evidence Code section 352. He also contends the prosecutor used the challenged testimony to impermissibly vouch for the prosecution's case, and in particular, the victim's credibility. While defendant concedes he did not object to all of the challenged testimony, he urges us not to apply the forfeiture doctrine. Even if forfeiture applies to some or all of the claims, he argues alternatively that his counsel was ineffective for failing to object. We consider each category of evidence below.

A.

Testimony that Not All Prior Sexual Assault Investigations Led to Arrests

As noted above, the prosecutor questioned Sergeant Madden about her general law enforcement background and experience, including how many sexual assault investigations she had conducted. She testified that she had conducted about 50 sexual assault investigations, and 20 to 25 of those investigations involved an adult alleged perpetrator and an alleged child victim. When asked whether arrests were made in each of those 20 to 25 sexual assault investigations, Sergeant Madden responded, "no,"

explaining that whether an arrest was made depended on where an investigation led. Later, Sergeant Madden estimated that in about 10 percent of the cases involving an adult alleged perpetrator and an alleged minor victim, the suspects were not arrested.[3] Defense counsel did not object to this line of questioning.

To preserve a claim that a trial court erroneously admitted evidence, a defendant must make a clear, specific, and timely objection at trial. (Evid. Code, § 353.)[4] The failure to do so forfeits the claim on appeal. (*People v. Partida, supra,* 37 Cal.4th at p. 434 [a defendant's failure " ' "to make a timely and specific objection" on the ground asserted on appeal makes that ground not cognizable' " on appeal].)

Here, by not objecting below, defendant's evidentiary challenge to Sergeant Madden's testimony that not all prior sexual assault investigations led to arrests is forfeited. The same applies to Sergeant Madden's later testimony further specifying that arrests did not occur in about 10 percent of sexual molestation cases she had investigated.

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3 We disagree with defendant's interpretation of the record that Sergeant Madden testified that only "about ten percent" of the 20-25 child molestation investigations she had conducted resulted in arrests. After carefully reviewing the testimony, we conclude Sergeant Madden testified that suspects *were not arrested* in about ten percent of her prior cases. The testimony was as follows:

"Q: You said, 20, or 25 cases over your three-year period as a detective involved allegations of child molest? [¶] A: Yes. [¶] Q: And you said arrests *weren't made* in all of those, correct? [¶] A: No. [¶] Q: And about what percentage, if you can recall? [¶] A: I would say about ten percent." (Italics added.)

4 Evidence Code 353 provides in relevant part: "A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: [¶] (a) There appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion . . . ." (Evid. Code, § 353, subd. (a).)

The fact defense counsel objected to *different testimony* based on relevancy grounds--that suspects in sexual molestation cases often deny the allegations--is not sufficient to preserve defendant's appellate challenge to Sergeant Madden's testimony that not all sexual molestation investigations result in arrests. (*Partida, supra*, 37 Cal.4th at p. 434; *People v. Carpenter* (1999) 21 Cal.4th 1016, 1046-1047 [the defendant's objection at a pretrial hearing to any testimony about gun possession was not sufficient to preserve an objection to the actual testimony about two *different* guns"].) Evidence Code section 353 requires a request "to exclude *specific evidence* on the *specific legal ground* urged on appeal." (*People v. Morris* (1991) 53 Cal.3d 152, 188, italics added, disapproved on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.)

Anticipating forfeiture, defendant alternatively argues he received ineffective assistance of counsel when his trial attorney failed to object to the evidence regarding arrests in other sexual assault investigations. The same ineffectiveness standards discussed above apply. (*Ledesma, supra*, 43 Cal.3d at pp. 216-218; *Bolin, supra*, 18 Cal.4th at p. 333; *Strickland, supra*, 466 U.S. at p. 697.) Like before, we need not decide whether counsel had a reasonable tactical basis for omitting an objection because we conclude defendant cannot show prejudice under *Strickland*. (*Strickland, supra*, 466 U.S. at p. 697.)

In assessing the prejudice prong of the ineffective assistance of counsel inquiry, we begin with whether the evidence was admissible. (*Smithey, supra*, 20 Cal.4th at p. 965 [court evaluated admissibility of challenged evidence to determine whether defense counsel's failure to object was prejudicial ineffective assistance of counsel].) To be admissible, evidence generally must be relevant. (Evid. Code, § 351 ["Except as otherwise provided by statute, all relevant evidence is admissible"].) " 'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness

or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) "The concept of relevance is very broad . . . ." (*People v. Salcido* (2008) 44 Cal.4th 93, 147.)

The determination of whether evidence is relevant is reviewed for abuse of discretion. (*People v. Panah* (2005) 35 Cal.4th 395, 474.) A trial court's evidentiary ruling will not be disturbed, and reversal of a judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113.)

Here, the trial court impliedly found the challenged evidence relevant. Given the "very broad" concept of relevance, we conclude there was no abuse of discretion. Sergeant Madden testified about her general law enforcement background and experience, including her experience investigating sexual assault or molestation allegations. As the People argue, her statement that not all of her previous sexual assault investigations resulted in arrests, but rather depended on where an investigation led, was relevant to her credibility and showed how she investigated cases of this nature. (Evid. Code, § 210 [evidence bearing on a witness's credibility is relevant].) The evidence is not, as defendant argues, relevant to show Sergeant Madden could accurately sort the guilty from the innocent, arresting only those who were guilty. Rather, the evidence had a reasonable tendency to prove or disprove her credibility regarding the manner in which she conducted criminal investigations.

The trial court, moreover, did not abuse its discretion in impliedly finding the testimony was not unduly prejudicial under Evidence Code section 352. (*People v. Valdez* (2012) 55 Cal.4th 82, 133 [determination of whether evidence is more prejudicial than probative is reviewed for abuse of discretion].) That statute provides: "The court in

its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury". The prejudice referred to in Evidence Code section 352 applies to evidence that uniquely tends to evoke an emotional bias against the defendant as an individual and has very little effect on the issues. (*People v. Karis* (1988) 46 Cal.3d 612, 638.)

The prosecutor's questions were brief and did not consume an undue amount of time. And given Sergeant Madden did not opine on defendant's guilt or innocence, or directly compare her prior investigations to defendant's case, the jury was unlikely to be misled by the brief testimony. She merely described her general background, training, and experience in the area of sexual molestation investigations that the jurors were unlikely to be familiar with and that was not likely to evoke an emotional response from the jury.

Even if the probative value of Sergeant Madden's testimony on the number of arrests in other cases was marginal, we conclude any arguable error in admitting the evidence was harmless. That is, it is not reasonably probable that defendant would have received a more favorable verdict absent such testimony. (*Partida, supra*, 37 Cal.4th at p. 439 [state law error in admitting evidence subject to *Watson* test]; *Watson, supra*, 46 Cal.2d at pp. 836-837.)

Notably, the jury was instructed not to consider the fact that defendant had been arrested in deciding the case. The court instructed the jury as follows: "The fact that a criminal charge has been filed against the defendant is not evidence that the charge is true. You must not be bias[ed] against the defendant just because he has been arrested, charged with a crime, or brought to this trial. A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt." We presume the jury followed the court's instruction to

disregard defendant's arrest in reaching a verdict. (*People v. Edwards* (2013) 57 Cal.4th 658, 746 [reviewing court presumes jurors understand and follow the court's instructions].)

Because the jury was instructed to disregard the fact that defendant had been arrested, it is not reasonably likely the jury would have reached a different verdict had Sergeant Madden not testified in general that some of her sexual assault investigations resulted in arrests and others did not. Given the absence of prejudice in admitting the challenged testimony, defendant has not shown prejudice under *Strickland, supra,* 466 U.S. 668 to support his ineffective assistance claim.

B.

Testimony that Sexual Molestation Suspects Commonly Deny Allegations

The prosecutor asked Sergeant Madden whether defendant denied the allegations against him, which she explained he had; she said she factored those denials into her investigation. The prosecutor then asked whether it was uncommon for a suspect in a child sexual molestation case to deny the allegations. Over defense counsel's relevancy objection, Sergeant Madden was allowed to testify that in her training and experience it was very common for suspects to deny sexual molestation allegations.

Defendant now argues such testimony was irrelevant and more prejudicial than probative under Evidence Code section 352. Because he did not object based on Evidence Code section 352 in the trial court, that argument is forfeited on appeal. (*Partida, supra,* 37 Cal.4th at p. 434.) Defendant's relevance objection was insufficient to preserve an Evidence Code section 352 appellate challenge. (*People v. Alexander* (2010) 49 Cal.4th 846, 905.)

Defendant's relevance objection is not persuasive. The trial court did not abuse its discretion in impliedly finding relevant Sergeant Madden's testimony that suspects often deny the allegations against them. The testimony tended to show how Sergeant Madden

investigated sexual molestation cases, including the effect such denials had on her investigations. As the People argue, the testimony helped explain what other steps she took, such as looking for inconsistencies in a suspect's statements, when investigating sexual abuse claims in the face of such denials.

Even if defendant had not forfeited his alternative claim that the testimony was unduly prejudicial under Evidence Code section 352, he has not shown the evidence's probative value was substantially outweighed by the danger of undue prejudice, confusion of issues, or misleading the jury. Sergeant Madden's testimony was not inflammatory and was unlikely to evoke an emotional response from the jury adverse to defendant. Rather, such testimony likely reinforced a commonly held belief that suspects in criminal cases often deny the allegations against them. The challenged testimony was brief and did not confuse the issue before the jury, namely, whether defendant was in fact guilty of the charged offenses.

Because we conclude admitting Sergeant Madden's testimony that suspects often deny sexual abuse allegations was relevant and not more prejudicial than probative, defendant cannot show prejudice from counsel's failure to object based on Evidence Code section 352 for purposes of an ineffective assistance of counsel claim. (*Smithey, supra,* 20 Cal.4th at p. 965.)

C.

Testimony that the Victim's Trial Testimony was Largely Consistent with his MDI Interview

Defendant argues Sergeant Madden gave inadmissible opinion testimony when she testified that having observed both the victim's trial testimony and his MDI interview that occurred two years earlier, she would describe his trial testimony as being largely consistent with his MDI interview. Defendant did not object to the testimony below.

The absence of an objection during trial forfeits defendant's challenge on appeal. (*Partida, supra,* 37 Cal.4th at p. 434.)

Defendant's alternative ineffective assistance of counsel claim is equally unavailing. Even assuming, without deciding, that Sergeant Madden's statement constituted inadmissible opinion testimony[5] (see, e.g., *People v. Sergill* (1982) 138 Cal.App.3d 34, 38-39 [improper opinion testimony from two police officers who testified that alleged child sexual abuse victim was truthful]), defendant cannot establish prejudice because it is not reasonably probable that a different outcome would have resulted had Sergeant Madden not testified that the victim's trial testimony was largely consistent with his MDI interview. (*Strickland, supra*, 466 U.S. at p. 697; *Bolin, supra,* 18 Cal.4th at p. 333 [a reasonable probability is one that sufficiently undermines confidence in the outcome]; *Harrington, supra*, 562 U.S. at p. 112 [the likelihood of a different result must be more than conceivable; it must be substantial].)

Unlike in *Sergill,* where the court erroneously declared in effect that an officer was especially qualified to render his opinion as to whether a person reporting a crime was telling the truth, and allowed the officer to testify that the child victim was truthful (*Sergill, supra*, 138 Cal.App.3d at pp. 38-41), Sergeant Madden did not expressly testify that the victim was truthful nor did the court instruct the jury that Sergeant Madden was uniquely qualified to discern truthfulness. Instead, Sergeant Madden testified that having

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5 " 'A lay witness may express an opinion based on his or her perception, but only where helpful to a clear understanding of the witness's testimony (Evid. Code, § 800, subd. (b)), "i.e., where the concrete observations on which the opinion is based cannot otherwise be conveyed." ' " (*People v. DeHoyos* (2013) 57 Cal.4th 79, 130.) Evidence Code section 801 mandates, among other things, that expert testimony be "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact . . . ."

viewed both the MDI interview and the victim's trial testimony, the statements were "largely consistent."

The jury, however, was already aware of various consistencies as well as discrepancies in the two statements as both parties compared portions of the MDI interview to the victim's trial testimony when questioning the victim and Sergeant Madden. The isolated statement that the victim's testimony was "largely consistent" with his prior interview was consistent with the testimony the jury had already heard. Under those circumstances, the statement was harmless. (Cf. *DeHoyos, supra,* 57 Cal.4th at pp. 130-131 [any error in excluding opinion testimony was harmless because substance of excluded opinion testimony was before the jury in slightly different forms from various witnesses].)

Viewing the record as a whole, there is no reasonable probability the jury would have reached a more favorable verdict if defense counsel had objected to Sergeant Madden's "largely consistent" statement. The absence of prejudice is fatal to defendant's ineffective assistance of counsel claim.

D.

Vouching for Witness

In a related argument, defendant contends the prosecutor used Sergeant Madden's challenged testimony discussed above to impermissibly vouch for the credibility of the prosecution's case. He argues that during closing argument the prosecutor used Sergeant Madden's testimony about her other sexual assault investigations to place the prestige of law enforcement authority behind the decision to arrest and prosecute defendant notwithstanding his repeated denial of the charges, and to reassure the jury that defendant would not have been arrested and charged unless he was guilty. He also contends the prosecutor used Sergeant Madden's testimony that the victim's testimony was largely

consistent with his MDI interview to defuse any damage from defense counsel's use of the MDI interview to impeach the victim.

"A prosecutor is prohibited from vouching for the credibility of witnesses or otherwise bolstering the veracity of their testimony by referring to evidence outside the record." (*People v. Frye* (1998) 18 Cal.4th 894, 971, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) A prosecutor is also prohibited from placing the prestige of his or her office behind a witness "by offering the impression that [he or] she has taken steps to assure a witness's truthfulness at trial." (*Frye*, at p. 971.) A prosecutor's assurances regarding the apparent honesty or reliability of prosecution witnesses do not constitute improper vouching, however, if they are based on evidence in the record and reasonable inferences from such evidence, rather than on any purported personal knowledge or belief. (*Ibid.*)

We have already concluded the court properly admitted Sergeant Madden's testimony that not all of her sexual assault investigations resulted in arrests and that suspects often deny allegations in such cases. We conclude the prosecutor's statements during closing argument referring to such evidence to be proper comment on the evidence introduced at trial and not, as defendant argues, improper vouching. (*Frye, supra,* 18 Cal.4th at pp. 971-972 [prosecutor can properly comment on evidence adduced at trial].)

Regarding Sergeant Madden's statement that the victim's testimony was "largely consistent" with his MDI interview, we note that in *Frye* the Supreme Court found a prosecutor's statement during closing that a witness's testimony and statements to police were "remarkably consistent" did not constitute improper vouching. (*Frye, supra,* 18 Cal.4th at p. 972.) And even if we assume the statement should have been excluded as improper opinion testimony, the prosecutor's brief reference to the statement during closing did not implore jurors to forego their independent assessment of the evidence and

accept Sergeant Madden's characterization as accurate. Instead, the prosecutor largely focused on the admitted evidence, particularly the victim's detailed testimony about the sexual abuse he suffered. Under these circumstances, we conclude the prosecutor did not improperly vouch for his case by referring to any of Sergeant Madden's testimony.

III

Minor Victim's Support Dog

Defendant contends the trial court violated his state and federal constitutional confrontation rights by allowing the victim to testify with a support dog during the initial day of his testimony[6] without first determining there was an individualized need for the dog. He speculates that the support dog may have changed the victim's demeanor on the stand or otherwise bolstered his credibility in the eyes of the jury. Although he concedes he did not object to the support dog, defendant urges the court to reach the issue on the merits. Alternatively, he argues his counsel was constitutionally ineffective for failing to object to the support dog.

We conclude defendant forfeited his challenge by not objecting below. In *People v. Myles* (2012) 53 Cal.4th 1181 at page 1214, the court found the defendant forfeited a similar claim where the defendant did not object when the victim-witness advocate accompanied a witness to the witness stand. (See also *People v. Stevens* (2009) 47 Cal.4th 625, 641 [defendant's failure to object to the support person's presence at trial waived any claim of error from the procedure used].) Even if defendant had properly preserved his objection, there is no merit to his contention.

A trial court has broad discretion under Evidence Code section 765 to exercise control over the interrogation of witnesses, and to protect them from undue harassment or

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6 The victim testified over two days. The support dog was not present during his second day of testimony.

embarrassment. (Evid. Code, § 765.) The statute provides in relevant part: "The court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment." (Evid. Code, § 765, subd. (a).) We review a trial court's exercise of its authority under Evidence Code section 765 for abuse of discretion. (*People v. Chenault* (2014) 227 Cal.App.4th 1503, 1514 (*Chenault*).)

Chenault recognized that a trial court has authority under Evidence Code section 765 "to allow the presence of a therapy or support dog during a witness's testimony." (*Chenault, supra*, 227 Cal.App.4th at p. 1514.) Applying the reasoning and holdings of cases interpreting section 868.5[7] that allows support persons for testifying witnesses, the court found the presence of a support dog was not inherently prejudicial and does not, as a matter of law, violate a criminal defendant's federal constitutional rights to a fair trial and to confront witnesses against him or her. (*Chenault,* at pp. 1515-1516.)

Chenault further held that the federal Constitution does not require a case specific finding that an individual witness *needs* a support dog. (*Chenault, supra*, 227 Cal.App.4th at p. 1516.) Instead, in exercising its discretion under Evidence Code section 765, "a trial court should consider the particular facts of the case and the circumstances of each individual witness and determine whether the presence of a support dog would assist or enable that witness to testify without undue harassment or embarrassment and provide complete and truthful testimony." (*Chenault,* at p. 1517.)

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[7] Section 868.5 provides in part: "Notwithstanding any other law, a prosecuting witness in a case involving a violation of . . . Section . . . 286, 288 . . . 288.7 . . . shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial . . . during the testimony of the prosecuting witness." (§ 868.5, subd. (a).)

This includes whether a support dog would reduce the stress or trauma the witness may experience when testifying in court. (*Ibid.*) While express findings are preferred, they are not required. (*Id.* at p. 1520.) Instead, "if there is sufficient evidence on the record to support the required findings, [] implicit findings may be adequate to support the trial court's exercise of discretion under Evidence Code section 765 to allow the presence of a support dog." (*Ibid.*)

While defendant acknowledges *Chenault, supra*, 227 Cal.App.4th 1503, he nevertheless urges us not to follow the decision. Citing *People v. Adams* (1993) 19 Cal.App.4th 412 (*Adams*), he argues his federal and state constitutional confrontation rights required the court to find the victim needed the support dog before the court could allow its presence. *Adams*, which involved the presence of a support person at the stand who was also a testifying witness, concluded the federal Constitution requires a trial court to make a case-specific finding that an individual witness has a *need* for the presence of a support person before it may grant a section 868.5 request to allow the support person to be present during testimony. (*Adams, supra*, 13 Cal.App.4th at p. 443.) In so holding, *Adams* relied on *Maryland v. Craig* (1990) 497 U.S. 836 [111 L.Ed.2d 666] that involved the testimony of a child witness by closed-circuit television, and *Coy v. Iowa* (1988) 487 U.S. 1012 [101 L.Ed.2d 857] that involved the placement of a screen between the defendant and the child witnesses. (*Adams*, at pp. 443-444.)

But as *Chenault* and other courts have pointed out, "the presence of a support person is different in kind from the specialized procedures challenged in *Maryland* and *Coy*." (*Chenault, supra*, 227 Cal.App.4th at p. 1516; see also *People v. Lord* (1994) 30 Cal.App.4th 1718, 1722 ["The use of a support person, unlike testimony on one-way closed-circuit television, does not deny a face-to-face confrontation, and thus does not implicate the type of constitutional showing requiring in *Maryland*"].) *Chenault* thus disagreed with the reasoning in *Adams*. (*Chenault*, at p. 1516.) We agree with the

reasoning in *Chenault*. Allowing the victim to testify with a support dog on the first day of his testimony did not violate defendant's constitutional confrontation rights, nor was the court required to expressly find the victim had an individualized need for the dog during his testimony.

Based on our review of the record, we conclude the trial court implicitly found the presence of the support dog would assist or enable the victim to testify completely and truthfully without undue harassment or embarrassment. The court properly instructed the jury not to consider the dog's presence as any sort of validation of anyone's position, and further instructed the jury "not to consider [the dog's presence] for any purpose, or discuss it, or allow it to influence your analysis of the testimony of this witness." We presume the jury followed the court's instructions. (*People v. Yeoman* (2003) 31 Cal.4th 93, 139 [the presumption that jurors understand and follow instructions is " '[t]he crucial assumption underlying our constitutional system of trial by jury' "].)

IV

Cumulative Error

Defendant contends his convictions should be reversed because the cumulative prejudice of the alleged errors during trial violated his due process right to a fundamentally fair and reliable trial under the California and federal Constitutions. As discussed, any error was individually harmless. We see no possibility that their individual effects, if any, cumulatively resulted in prejudice to defendant. (See *People v. Bolden* (2002) 29 Cal.4th 515, 567–568; *People v. Moore* (2011) 51 Cal.4th 386, 417-418 ["The three errors we have concluded or assumed occurred below, each individually harmless, related to distinct procedural or evidentiary issues not closely related to one another. We see no possibility their individual effects, if any, cumulatively resulted in prejudice to defendant"].)

DISPOSITION

The judgment is affirmed.

/s/
HOCH, J.

We concur:

/s/
RAYE, P. J.

/s/
RENNER, J.